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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

New York, N.Y.

4 v.

11 Cr4. 114(MGC)

5 XING LIN,

6 Defendant.

7 -----x

8 October 19, 2012
9 3:25 p.m.

10 Before:

11 HON. MIRIAM GOLDMAN CEDARBAUM,

12 District Judge

13
14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 BY: PETER M. SKINNER

18 Assistant United States Attorney

19 JOEL S. COHEN

20 Attorney for Defendant

21
22 ALSO PRESENT:

23 BRENDA CHEN, Fuzhou Interpreter

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1 (In open court)

2 (Case called)

3 THE COURT: Mr. Lin, have you seen the superseding
4 indictment that's been filed against you? I think you should
5 get up.

6 THE DEFENDANT: Yes, yes.

7 THE COURT: And have you discussed it carefully with
8 your lawyer?

9 THE DEFENDANT: Yes.

10 THE COURT: I will be happy to explain anything to you
11 in it that you do not understand. Do you understand what the
12 charges against you are?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Do you understand it well enough to enter
15 a plea to the charges? I will be happy to explain them further
16 to you if you have any questions about them.

17 THE DEFENDANT: I understand. I plead not guilty.

18 THE COURT: All right. There are several counts here,
19 there are several crimes that are charged, so I am going to ask
20 you as to each of them how you plead.

21 Count One charges you with belonging to a criminal
22 enterprise, which charges a violation of a statute which
23 prohibits basically a racketeering conspiracy, and it is
24 charged that you were a member and indeed were the leader of a
25 racketeering conspiracy. Do you understand that charge?

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1 THE DEFENDANT: Yes.

2 THE COURT: And how do you plead to that charge?

3 THE DEFENDANT: Not guilty.

4 THE COURT: Not guilty.

5 And then you are also charged in Count Two with
6 actually participating in a racketeering conspiracy which
7 charges that one of the racketeering acts of that criminal
8 enterprise was the murder of Chan Qin Zhou. How do you plead
9 to that charge?

10 THE DEFENDANT: Not guilty.

11 THE COURT: There is a third charge in this
12 superseding indictment which charges you with murder in that
13 during and in relation to crimes of violence for which you may
14 be prosecuted in a court of the United States, and those crimes
15 of violence are named as extortion and conspiracy to commit
16 extortion, it is charged that you did use and carry a firearm
17 and caused the death of a person through the use of the
18 firearm. Now, that is a charge really of doing it yourself but
19 also a charge of aiding and abetting somebody to do it. And I
20 take it the charge here is that you told somebody to do it,
21 actually, is that correct?

22 MR. SKINNER: That's correct, your Honor.

23 THE DEFENDANT: No.

24 THE COURT: A man known as Little Beijing, that you
25 told him to commit extortion -- wait a minute. I am moving

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1 from three to four. First, that you did tell him to shoot
2 Zhou, but it is also charged in Count Four -- first let me ask
3 you how you plead to Count Three, to the charge that you are
4 responsible for the murder of Chan Qin Zhou? How do you plead
5 to that charge?

6 THE DEFENDANT: Not guilty.

7 THE COURT: And then Count Four, there are actually
8 four counts in this indictment. It is also charged --

9 MR. COHEN: Your Honor, actually there are --

10 THE COURT: Is there a fifth?

11 MR. COHEN: Yes.

12 MR. SKINNER: There is a fifth, your Honor.

13 THE COURT: I'm sorry. I missed the fifth. All
14 right. There are five charges against you. The fourth charge
15 is that you extorted money from another person who owned a bus
16 company by the wrongful use of threatened force and fear and
17 did, by that conduct, affect interstate commerce.

18 How do you plead to that charge?

19 THE DEFENDANT: Not guilty.

20 THE COURT: And it is also charged that you conspired
21 to do that, that is, you agreed with others to commit
22 extortion.

23 How do you plead to that?

24 THE DEFENDANT: Plead not guilty.

25 THE COURT: Very well. I will enter your pleas and

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1 you may be seated.

2 Since there are many new charges here, I take it that
3 this case will not go forward to trial on the previously set
4 date, is that correct?

5 MR. COHEN: That's correct, your Honor. Couldn't be
6 ready by then.

7 THE COURT: Right. I think even if the trial date is
8 postponed, I think it is still a good idea to schedule a trial
9 date now.

10 Has all discovery been completed?

11 MR. SKINNER: Your Honor, I was explaining to
12 Mr. Cohen before our conference today, there are three piece of
13 discovery relating to conduct of the enterprise generally that
14 the government would be seeking to introduce -- two bullets and
15 video that are referenced in New York City Police Department
16 reports that we have reviewed. We are in the process of trying
17 to obtain that evidence, assuming it still exists. It is old
18 evidence, one bullet from 2000 and one from 2003.

19 So I have described to Mr. Cohen what it is --

20 THE COURT: I'm sorry. What do you mean one bullet
21 from 2000 and one from 2003?

22 MR. SKINNER: There were two shootings that the
23 defendant participated in that we will be seeking to introduce
24 as evidence of the existence of the enterprise, and assuming --

25 THE COURT: Who was shot apart from the bodyguard?

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1 MR. SKINNER: In one instance there was a dispute at a
2 gambling parlor in 2000 where the government alleges that we
3 can prove that the defendant and his coconspirators opened fire
4 in a gambling parlor in Chinatown, fled that gambling parlor,
5 and were subsequently stabbed by -- defendant was stabbed by
6 one of the people who worked for the owner of the gambling
7 parlor.

8 THE COURT: Defendant was stabbed or defendant stabbed
9 someone?

10 MR. SKINNER: The defendant was stabbed.

11 THE COURT: Was stabbed.

12 MR. SKINNER: There is a separate --

13 THE COURT: What is the relevance of that?

14 MR. SKINNER: Well, the government, in advance of
15 whatever the trial date is, will be filing a motion in which we
16 outline the evidence that we would seek to introduce as
17 evidence of the existence of the criminal enterprise, that is
18 here the criminal organization that the defendant ran. And we
19 think we can prove, and we will argue in the papers beforehand,
20 that this particular shooting occurred in furtherance of the
21 enterprise itself and is evidence of the existence of the
22 enterprise that should be admitted.

23 Of course if the court disagrees, then we won't be
24 introducing that, but that is one additional thing we were
25 going to try and put in. We flagged it to Mr. Cohen, and there

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1 is one bullet related to that shooting that we are trying to
2 get. So we described that to him. I don't think -- when and
3 if we are able to obtain --

4 THE COURT: This is the mahjong parlor.

5 MR. SKINNER: It was a rival mahjong parlor. It was
6 not the defendant's mahjong parlor.

7 THE COURT: The defendant operates a mahjong parlor?

8 MR. SKINNER: The defendant did. The defendant
9 operated multiple gambling parlors in Chinatown from 1996 to
10 the early 2000s, as alleged in the racketeering charges.

11 THE COURT: What is the statutory period? What is the
12 statute of limitations?

13 MR. SKINNER: The statute of limitations on a RICO
14 charge is five years, but it can extend back so long as one act
15 in furtherance of the racketeering conspiracy or in furtherance
16 of the substantive racketeering enterprise occurred within five
17 years. The allegation here is that one of the victims of the
18 defendant's crimes was extorted up until 2009 but that the RICO
19 enterprise runs back until at least 1996, which is when we have
20 evidence that the defendant was operating illegal gambling
21 parlors in Chinatown. So the charge date range within the
22 indictment is 1996 until December of 2009.

23 THE COURT: Is there a time at which he stopped
24 operating it?

25 MR. SKINNER: Well, the evidence that we have is that

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1 the extortion payments finished in December 2009, so -- we have
2 every reason to believe there is a presumption that RICO
3 conspiracies would continue, that it would have continued up
4 until the time of his arrest, but the charge date period is to
5 the evidence that we have, so it runs until the end of December
6 2009.

7 In any event, I got a little off track, there are
8 three additional pieces of evidence that we are trying to
9 obtain from the New York City Police Department. We have
10 described to Mr. Cohen what they are, and we will make them
11 available to Mr. Cohen when and if we are able to obtain them,
12 and there is no additional discovery that needs to be produced.

13 THE COURT: You have concluded discovery?

14 MR. SKINNER: Yes, your Honor, with the exception of
15 those three things. And if we obtain any additional evidence,
16 say, medical records relating to the defendant's wounds at one
17 of these shootings or the stabbing, we will make them available
18 right away. But for the time being we don't have anything else
19 to produce.

20 THE COURT: Very well.

21 Mr. Cohen, how much time do you need?

22 MR. COHEN: Your Honor, at the outset, this was a
23 difficult case to prepare because --

24 THE COURT: It keeps moving.

25 MR. COHEN: It keeps getting older. Initially the

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1 homicide that was charged happened in 2004 and, and that's been
2 difficult to deal with. But now we are going back eight years
3 beyond that to 1996. So I am going to have to be looking at
4 where my client was at that time, where he lived, where he
5 worked. So I think we are talking about significant additional
6 investigation. I am a single practitioner. I have been on
7 trial for almost three weeks before Judge Johnson in the
8 Eastern District with at least another week or two to go. I am
9 thinking probably at least two months. And of course I think
10 once the government files its *in limine* motion to admit
11 evidence of the enterprise, if that happens sooner rather than
12 later, it would certainly assist me in seeing (a) whether there
13 is going to be opposition to that and on what basis. Of course
14 there is a presumption that the enterprise continues, but that
15 can certainly be rebutted by numerous things, and in this case
16 possibly by the fact that Mr. Lin was arrested in Canada, and
17 I'm not sure evidence exists he was in the United States even
18 for a significant portion of the time.

19 So I am thinking that we can either set a trial date
20 now several months hence or that the government could, by a
21 certain date, file its motion *in limine*, and once we see what
22 it is that we are deal with, then perhaps have a conference to
23 address that and fix a trial date at that time.

24 THE COURT: Let me understand. I thought at the
25 initial arraignment Mr. Lin told me that he had been living in

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1 the south. Did I misunderstand?

2 MR. COHEN: I think that was up to, if I recall
3 correctly, up until the time of the incident charged on July
4 30, 2004.

5 THE COURT: I see. And since that time he has been
6 living here?

7 MR. COHEN: I didn't say that, Judge. I said he was
8 arrested in Canada. I am trying not to answer questions about
9 where he was living, but I know that he was arrested in Canada,
10 and it appears that there was some evidence that the government
11 has that he had been living in Canada for a substantial period
12 of time, which I have learned from reading the extradition
13 request.

14 THE COURT: I see. I see. And when is it that you
15 contend that he was running gambling facilities in Chinatown?

16 MR. SKINNER: 1996 until the early 2000s. I think the
17 indictment alleges up until --

18 THE COURT: So it's really quite long time ago.

19 MR. SKINNER: The gambling parlors, yes. The gambling
20 parlors were late '90s/early 2000s.

21 THE COURT: Where was he living at that time?

22 MR. SKINNER: In New York City. And then after the
23 shooting and stabbing, after the shooting in 2003, he then --
24 it is our belief that he then moved to Atlanta, where he was up
25 until the time of the shooting at the karaoke parlor -- that

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1 was the murder that was the original charge in the
2 indictment -- and that after that he fled the New York City
3 area, we are not sure exactly where he was for a period of
4 time, but that he eventually ended up in Canada. Regardless,
5 during all of that period of time, on a monthly basis he
6 continued to collect extortion payments from one of the bus
7 company extortion victims. So the government's argument is
8 going to be that enterprise --

9 THE COURT: What do you mean throughout all that time?
10 What time are you talking about?

11 MR. SKINNER: The time from the shooting in July of
12 2004 up until December of 2009, when the government's witness
13 says he stopped make the payments. He said during that entire
14 period of time, roughly every month, I was getting money to the
15 defendant through instructions that the defendant would give
16 him as to who to pay, his wife or other people. So the
17 government's argument is that despite the fact that the
18 defendant had fled the New York City area, certainly a large
19 portion of criminal activity alleged took place in New York,
20 and that he continued to -- he continued to benefit from the
21 enterprise right up until 2009, when the payments stopped,
22 regardless of where he may have been physically located. But
23 we don't have any objection to setting a trial date and
24 scheduling a date by which we will file an enterprise motion,
25 you know, sufficiently in advance of the date to give Mr. Cohen

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1 time to respond. That's obviously fine with us.

2 THE COURT: I have another criminal trial scheduled to
3 begin on January 7 for which I have gotten various estimates of
4 length. Off the record.

5 (Discussion held off the record)

6 THE COURT: I think the safest thing is to set this
7 for the week starting February 4, if that's agreeable to
8 counsel and to the defendant, of course.

9 MR. COHEN: I think that makes sense, your Honor. I
10 would certainly urge Mr. Lin to agree that we require that time
11 in order to adequately prepare to defend against these very
12 serious charges.

13 THE COURT: All right. Mr. Lin, do you agree that I
14 should exclude the time between now and February 4 from the
15 Speedy Trial clock because you and your lawyers need to prepare
16 your defense in this case, to take that time to prepare your
17 defense?

18 THE DEFENDANT: Yes.

19 THE COURT: And I take it the government has no
20 objection.

21 MR. SKINNER: No, your Honor. We would join in the
22 application to exclude time.

23 THE COURT: Very well. Then I will set February 4 at
24 9:30 in the morning for the trial of this case.

25 Your best estimate of the length is what?

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1 MR. SKINNER: Your Honor, I still think that, despite
2 the broadened scope of the charges, we are looking at a
3 two-week case at longest. I think the government's trial
4 evidence will be five to six trial days, add on jury selection
5 and a defense case, and I think we are likely done in two
6 weeks. It could go a little bit longer.

7 THE COURT: I understand. I am just asking for your
8 best estimate. Nobody ever knows.

9 MR. SKINNER: That's our estimate. At this point in
10 time we do not think that there will be significant -- many
11 more new witnesses on top of the ones that we had planned to
12 call all along to prove up the murder and extortion counts that
13 were charged in the superseding indictment returned back in
14 August. We certainly will require some additional time, but we
15 don't think we are talking about, you know -- we haven't turned
16 what was a one- to two-week trial into a one-month trial. We
17 think it is still in the two-week range.

18 THE COURT: Very well. Then I will, as I said, set
19 trial for February 4, at 9:30 in the morning, and I will
20 exclude the time between now and then from the Speedy Trial
21 clock. I will adopt Mr. Lin's view that the time between now
22 and then outweighs in the interest of justice, both his right
23 to a speedy trial and the public's right to a speedy trial.
24 And I will on that basis exclude the time between now and
25 February 4 from the Speedy Trial clock.

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1 Is there anything further?

2 MR. COHEN: Not by us, your Honor.

3 MR. SKINNER: No, your Honor. I think that was a key
4 thing for us was the trial date.

5 THE COURT: Very well. You are all excused.

6 MR. SKINNER: Thank you very much, your Honor.

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